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November 16, 2001

*BY HAND DELIVERY*

Magalie Roman Salas, Secretary  
Federal Communications Commission  
Accounting and Audits  
P.O. Box 358140  
Pittsburgh, Pennsylvania 15251-5140

**Re: Petition of Palau National Communications Corporation**

Dear Ms. Salas:

Enclosed for filing are an original and five copies of a Petition of Palau National Communications Corporation for declaratory rulings and waivers necessary to include PNCC in the universal service program and to allow it to participate in the National Exchange Carriers Association. Also enclosed is FCC Form 159, with payment of the filing fee of \$6220.

Please note that staff advised that this filing should refer to CC Docket No. 96-45.

Under separate cover, we are filing another copy of this petition in order to submit payment for the related request that PNCC be granted authority pursuant to Section 214 to provide international telecommunications services in the United States.

HOGAN & HARTSON L.L.P.

Magalie Roman Salas

November 16, 2001

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Please date-stamp the extra copy of this filing and return it to the awaiting messenger.

Respectfully submitted,

A handwritten signature in cursive script, reading "David L. Sieradzki".

David L. Sieradzki

Douglas A. Klein

Attorneys for Palau National  
Communications Corporation

Enclosures

cc: Eric Einhorn, Deputy Chief, Accounting Policy Division, CCB

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Palau National Communications Corporation	)	
	)	
Petition for Declaratory Ruling that	)	
Palau National Communications Corporation	)	
Is Subject to FCC Jurisdiction and Eligible to	)	
Participate in Universal Service Programs and	)	
the National Exchange Carrier Association	)	
	)	
Petition for Related Waivers and Application for	)	
International Section 214 Authority	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

**PETITION OF THE  
PALAU NATIONAL COMMUNICATIONS CORPORATION**

David L. Sieradzki  
Douglas A. Klein  
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555 Thirteenth St., N.W.  
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Counsel for the Palau National  
Communications Corporation

November 16, 2001

## **EXECUTIVE SUMMARY**

Pursuant to the Communications Act and the Compact of Free Association between the United States and the Republic of Palau, the Commission should issue a declaratory ruling and related waivers to include the Palau National Communications Corporation (“PNCC”) in the universal service program and to allow it to participate in the National Exchange Carriers Association (“NECA”).

The Republic of Palau, a strategically located group of islands in the western Pacific, was a United Nations Trust Territory under the administration of the United States until 1994. Since then, Palau has functioned as a Freely Associated State that continues to be treated as if it were part of the United States in a number of ways: its national security is entrusted to the U.S. armed forces, and it receives a range of benefits from various other federal agencies, including a major telecommunications loan to PNCC from the Rural Utilities Service.

The Compact of Free Association, ratified by the U.S. Congress and by a plebiscite of the people of Palau, defines the terms of the relationship between the United States and Palau. This Compact specifically provides for the FCC to exercise its Communications Act authority over any carrier that:

- 1) Is a “United States common carrier” (*i.e.*, holds a Section 214 certificate);
- 2) Provides domestic and international communications services in Palau; and
- 3) Does so using satellite earth stations that it owns and that are located in Palau.

PNCC satisfies all three of these criteria. First, upon grant of the Section 214 application included herein, it will be a U.S. common carrier. Second, PNCC provides domestic and international communications services in Palau. Third, all communications in Palau are interconnected with the U.S. and international public switched networks via the one satellite earth station in Palau that PNCC owns. Established FCC precedents support this conclusion.

Moreover, granting the relief requested herein would advance the public interest and the United States national interest. The United States has a vital strategic interest in Palau, particularly given Palau's proximity to some East Asian and Pacific countries that could be among the most critical "hot spots" in the worldwide war on terrorism. In addition, PNCC faces a financial crisis that was largely brought about by FCC policies reducing international accounting rates to benchmark levels and promoting a more competitive international telecommunications marketplace. The United States has a responsibility to provide explicit universal service support for PNCC's operations as an alternative to the implicit subsidies that are being eliminated. Moreover, the Compact expresses the United States' commitment to advancing the economic development of Palau, including critical infrastructure such as telecommunications networks.

Finally, the waivers and other relief sought here are identical to those granted under similar circumstances to carriers in other insular areas. And given that the FCC itself will exercise Title II regulatory authority over PNCC, there are ample grounds for holding that other carriers will have "effective competitive opportunities" in Palau, justifying grant of the requested Section 214 authority.

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
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Palau National Communications Corporation	)	
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International Section 214 Authority	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

**PETITION OF THE  
PALAU NATIONAL COMMUNICATIONS CORPORATION**

The Palau National Communications Corporation (“PNCC”), by counsel and pursuant to Sections 1.2 and 1.3 of the Commission’s rules, hereby requests the declaratory rulings and waivers necessary to allow it to participate in the federal universal service support program. To that end, PNCC also requests authority to become a member of the National Exchange Carrier Association (“NECA”), and international common carrier operating authority pursuant to Section 214 of the Communications Act of 1934 (“Act”).

In particular, PNCC requests a declaratory ruling that the Compact of Free Association between the United States and the Government of Palau (“Palau Compact”) gives the FCC jurisdiction over PNCC’s common carrier operations in Palau. Accordingly, PNCC must be included in the high-cost universal service



program pursuant to Section 254 of the Communications Act of 1934, as amended (“Act”), and the Palau Compact. In addition, PNCC requests waivers of certain provisions in Parts 36, 54, and 69 of the Commission’s rules that otherwise would preclude it from receiving high-cost universal service support and participating in NECA’s access tariffs and pools as of January 1, 2002. 1/

## **I. BACKGROUND**

### **A. Palau’s Strategic Importance and Unique Relationship to the United States**

PNCC is the government-owned local exchange carrier in Palau, a 300-mile-long archipelago located in the western Pacific with a population of approximately 19,500. Palau, under United States administration since the end of World War II, 2/ assumed a new status in 1994 as an independent, Freely

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1/ Specifically, PNCC requests waivers of:

- Provisions that restrict application of certain rules to carriers that the Act defines as incumbent local exchange carriers (“ILECs”);
- The provisions of Sections 36.611 and 36.612, to enable PNCC to receive high cost loop support based on forecasted or estimated costs;
- The definition of “study area” in Part 36; and
- Any other rules that may be necessary to waive to enable PNCC to receive all forms of high-cost support provided in the Commission’s rules.

2/ Palau was under Japanese control from 1914 through World War II. Japan made Palau a closed military area in 1938, and the islands’ strategic importance led to especially fierce fighting on the Palauan island of Peleliu during World War II. Following the war, Palau became a district of the Trust Territory of the Pacific

Associated State that continues to function as if it were part of the United States for a number of important governmental purposes. In particular, the United States armed forces are solely responsible for the security and defense of Palau, and are guaranteed exclusive access to its strategic sea lanes. Palau's strategic location and its unique relationship to the United States make it a potentially important asset in the current war on terrorism. Three of Palau's close neighbors, "[t]he Philippines, Malaysia, and Indonesia[,] have been pinpointed by the U.S. as potential future launching pads for attacks by Osama bin Laden's Al Qaeda network. . . ." <sup>3/</sup> In particular, there are close links between Al Qaeda and the Abu Sayyaf group, a militant Islamic group active in the Philippines that is included on the official United States list of terrorist organizations. Recognizing its strategic importance to the United States, the President of that Republic, following the events of September 11, 2001, offered the United States the use of Palau's sea ports and airports for the international and regional strategic mobilization effort against terrorism. <sup>4/</sup> The

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Islands, administered by the United States under a mandate from the United Nations.

<sup>3/</sup> "US Pushes Southeast Asian States on Islamic Radicals," *Christian Science Monitor*, Oct. 12, 2001 (available at <http://www.csmonitor.com/2001/1012/p7s2-woap.html>).

<sup>4/</sup> See Letter from President Tommy E. Remengesau, President, Republic of Palau, to President George W. Bush (September 12, 2001) (included in Appendix C to this Petition).

strategic importance of Palau to the United States was subsequently confirmed by the U.S. Ambassador to Palau in a communication to Palau's president. <sup>5/</sup>

The importance of Palau's close relationship with the United States is also demonstrated by the extensive links between Palau and civilian agencies of the United States government. For example, the Federal Aviation Administration oversees Palau's sole airport, and is in the process of funding major security enhancements in the wake of the September 11 attacks. The U.S. Federal Bureau of Investigation plays a vital law enforcement role in Palau. Moreover, the U.S. dollar is the currency of Palau, the U.S. Postal Service delivers the mail (Palau's two-letter postal abbreviation is "PW" and its Zip code is 96940), and the U.S. State Department provides consular services for Palauan citizens around the world. Palau is treated as a part of the United States for purposes of a wide range of federal programs from which it receives benefits, including those administered by the U.S. Departments of Agriculture, Commerce, Education, Health & Human Services, Interior, Justice, Labor, Transportation, Veterans Affairs, and the Environmental Protection Agency. Palau has received grants from such U.S. federal programs as the Job Workforce Investment Act, the Institute of Museum Services, disaster assistance, family planning services, community health centers, Head Start, child immunization grants, and HIV prevention activity.

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<sup>5/</sup> Letter from Ronald A. Harms, Charge d'Affaires, Embassy of the United States of America, to His Excellency Tommy E. Remengesau, Jr. President, Republic of Palau (Oct. 19, 2001) (included in Appendix C to this Petition).

The U.S. government has also made strategic, defense-related investments in infrastructure in Palau, including the airport, roads, and electric generating facilities. Notably, Palau has also received telecommunications support from the U.S. government that is identical to the support received by other parts of the United States. PNCC received a \$39.1 million long-term loan in November 1993 from the U.S. Department of Agriculture's Rural Utilities Service ("RUS"), to completely rebuild and modernize Palau's telecommunications infrastructure. In addition, discussed below, the legal document that governs Palau's relationship with the United States provides for the Federal Communications Commission to play an important role in regulating communications in Palau.

**B. The Legal Framework Governing Palau's Status as a Freely Associated State**

The Compact of Free Association between the United States and the Republic of Palau ("Compact" or "Palau Compact") was the product of several years of negotiations. Ultimately, the document was approved by the United States by an Act of Congress in 1986 <sup>6/</sup> and by Palau through a 1993 plebiscite. On October 1, 1994, Palau's status as a Trust Territory ended, and it became a Freely Associated State pursuant to the terms of the Compact. The U.S. government's interest in Palau's security and economic vitality continues under the terms of the Palau Compact. The Palau Compact provides that Palau's security and defense continue

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<sup>6/</sup> Approval of the Compact of Free Association with the Government of Palau, Pub. L. No. 99-658, 100 Stat. 3672 (1986), *codified at* 48 U.S.C. §§ 1931-1934.

to be the responsibility of the U.S. government and gives the U.S. military access to the Palauan islands and territorial waters for 50 years.

The Compact also provides that the FCC has jurisdiction over communications services in Palau under specified circumstances. Specifically, the Compact provides that “the United States Federal Communications Commission has jurisdiction, pursuant to the Communications Act of 1934, . . . and the Communications Satellite Act of 1962, . . . over all domestic and foreign communications services furnished by means of satellite earth terminal stations where such stations are owned or operated by United States common carriers and are located in Palau.” <sup>7/</sup> The legislative history of the Palau Compact confirms that “Palau will be included in the United States telecommunications system for rate-making and other operational aspects relating to United States common carriers.” <sup>8/</sup> The legal import of the Compact and the Act are discussed in further detail in Section III-A below.

### **C. The United States’ Responsibility for Telecommunications and Infrastructure Development in Palau**

Palau has a developing economy that is small (a gross domestic product estimated at \$160 million) but fairly stable. The key to its sustainable growth is modern reliable infrastructure, particularly the telecommunications

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<sup>7/</sup> Compact of Free Association, Pub. L. No. 99-658, 100 Stat. 3678 (1986), *codified at* 48 U.S.C. § 1931 note; Art. III, § 131 (included in Appendix A to this Petition).

<sup>8/</sup> Senate Rept. No. 99-403, P.L. 99-658, at 38.

network. In 1982, the telecommunications network in Palau was separated from direct government operation and turned over to a new government-owned corporation, the Palau National Communications Corporation (“PNCC”). At present, PNCC is the only local exchange carrier and interexchange carrier providing local and international telecommunications services throughout Palau. PNCC also is a participant in a joint venture that is developing mobile wireless telecommunications in Palau.

During the 48-year period of U.S. administration of Palau from 1946 through 1994, Palau’s telephone system became antiquated and inadequate for Palau’s then-existing and future needs. During the transition period preceding the entry into force of the Palau Compact, plans were developed for this antiquated telephone system to be turned over to the new government of Palau. Palau’s leadership recognized the shortcomings of the system and the need for Palau to obtain a modern, state-of-the-art telecommunications system. Such a telecommunications system was deemed necessary not only to foster the economic development and self-sufficiency of Palau but also in recognition of the unique historical and current strategic relationship of Palau with the United States, as specifically recognized in the Compact of Free Association.

PNCC was directed to establish such a telecommunications system. To that end, PNCC applied for and received a \$39.1 million long-term loan from the RUS to completely rebuild and modernize Palau’s telecommunications infrastructure, in November 1993 (after Palau’s Freely Associated State status had been negotiated and agreed to, and shortly before it went into effect). RUS, part of

the U.S. Department of Agriculture, specializes in providing financial, technical, and management assistance to utilities for infrastructure development. As is RUS's policy, the loan is collateralized by PNCC's assets and revenues.

By virtue of the RUS loan, a modern telecommunications system was designed and constructed by the United States and is now fully operational, <sup>9/</sup> providing the citizens of Palau (and various agencies of the U.S. government operating in Palau) with a full range of telecommunications services. However, PNCC still provides only UHF radio-telephone service to several distant islands 200 to 300 miles from its main body of islands, each of which has a population under 50 but potential for growth. Finally, Palau's entire telecommunications system is interconnected with the U.S. and international public switched telephone network by means of a single satellite earth station.

**D. FCC Policies and Related Developments Are Threatening PNCC's Ability to Continue Modernizing Its Network and to Repay the RUS Loan**

Regulatory policies compelling changes in traditional industry practices, coupled with significant and rapid changes in technology, are having a profound effect on PNCC's traditional revenue streams. These changes, in turn, threaten PNCC's continuing ability to afford capital improvements, to maintain its

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<sup>9/</sup> PNCC's infrastructure projects are built according to stringent specifications and standards established by RUS. Those standards and specifications apply to buildings, material, equipment, and systems, and are based on industry standards and codes as well as transmission, central office, and outside plant standards developed by RUS engineers.

network, and to offer modern yet affordable services. They also are making it difficult or impossible for PNCC to meet its obligations to regularly repay the RUS loan.

PNCC, like many similar carriers in developing countries, traditionally derived significant revenue from settlement payments from long-distance carriers in the U.S. and other developed countries for terminating calls to customers in Palau. But settlement payments are on the decline due to economic and regulatory pressure on international settlement rates. Not least among these factors is the FCC's international settlement rate benchmarks policy, which forces U.S. long-distance carriers to reduce their settlement payments to companies like PNCC. <sup>10/</sup> FCC policies promoting other arbitrage techniques such as "refile" (which enables international long-distance carriers to minimize their settlement payments by routing calls through third countries) also contribute to this trend.

PNCC also historically received substantial revenue from originating international long-distance calls. But international long-distance revenues are declining, due in part to the increasing popularity of Internet telephony, which enables callers to bypass the international long-distance rates of traditional carriers like PNCC. International call-back, a technique that enables customers to minimize charges for calls from foreign points to the U.S. by turning outbound calls into inbound calls, also places downward pressure on PNCC's international long-

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<sup>10/</sup> *International Settlement Rates*, 12 FCC Rcd 19806 (1997), *aff'd sub nom. Cable & Wireless PLC v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999).



distance revenues. FCC policies generally favor both Internet telephony and international callback. 11/

The FCC's benchmark settlements rules and its policies promoting refile, Internet telephony, and callback are in the process of eliminating much of the implicit subsidy in PNCC's rate structure. This presents great challenges to an island nation with a per capita gross domestic product of approximately \$6,272. PNCC is caught in a financial squeeze: while implicit subsidies are disappearing, PNCC cannot increase local rates to fully cover costs because, given the high capital cost of its system, the small population base, and the relatively low average income levels, that would require raising local rates to such a high level that few in Palau would be able to afford basic telephone services.

Moreover, the FCC-induced reductions in PNCC's revenues are imperiling PNCC's ability to repay the RUS loan. RUS's decision to grant the loan to PNCC was clearly based upon reasonable projections of PNCC's anticipated revenues, particularly its revenues from international settlements and international telephone calls, PNCC's largest revenue sources. Unfortunately, the increasing difficulty of maintaining implicit subsidies is making loan repayment (currently about \$2.2 million annually) extremely difficult.

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11/ See, e.g., *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501 (1998) (most forms of Internet telephony treated as information service); *VIA USA Ltd.*, 10 FCC Rcd 9540 (1997) (permits callback unless prohibited by foreign country).

Finally, the financial difficulties facing PNCC ultimately affect the Palauan economy and the security of both Palau and the United States. Without an adequate revenue base, PNCC will not be able to maintain the type of telecommunications system necessary for Palau to attract foreign direct investment. This endangers Palau's ability to expand its economic base and to pursue economic self-sufficiency. As a result, the United States government could face seriously expanded burdens of supporting Palau's economy, pursuant to its commitments under the Compact.

## **II. PALAU'S PARTICIPATION IN THE FEDERAL UNIVERSAL SERVICE PROGRAM WOULD ADVANCE THE PUBLIC INTEREST**

The United States national interest, as well as the "public interest" as defined in the Communications Act, would be served by granting the declaratory rulings and waivers requested here to enable PNCC to receive federal universal service support.

First, universal service support is needed to enable PNCC to continue deploying and upgrading its telecommunications network, which is a core element of Palau's basic economic infrastructure. By signing the Compact of Free Association with Palau, the United States has formally committed itself to promoting the development of Palau's economy, for which the United States was responsible for 48 years. As discussed above, without universal service support, PNCC will not be able to continue modernizing its network, and may be forced to increase local rates to levels that are unaffordable by a large proportion of the population.

Second, the FCC's international settlement benchmarks policy and its policies favoring refile, VOIP, and call-back are largely responsible for the PNCC's loss of implicit subsidies through reduced international settlements and long-distance rates. Given the ongoing close relationship between Palau and the United States and the unintended impact of the FCC's policies, the Commission should live up to its responsibility to provide PNCC a source of explicit support to replace the lost implicit subsidies, as it has done for domestic rural carriers. Moreover, universal service support is needed to enable PNCC to repay its RUS loan.

Third, and critically, providing universal service support to Palau is necessary to protect the national security interests of both Palau and the United States. Palau is a vital U.S. ally in a strategically important and sensitive part of the world, and the people of Palau stand firmly with the United States in its war to eradicate terrorism. But without universal service support, Palau will not be able to continue developing a modern and fully capable telecommunications infrastructure, which is a critical necessity for Palau to fulfill its important role in advancing the security of the United States.

Fourth, universal service support to PNCC is also consistent with the policies of the Telecommunications Act of 1996 ("1996 Act") and with established FCC precedents. The Joint Conference Report of the 1996 Act specifically indicates that Section 254(b) was amended to add consumers in "'insular areas' (such as the Pacific Island territories) . . . to the list of consumers to whom access to telecommunications and information services should be provided" with the support

of the federal universal service fund. <sup>12/</sup> The Commission, recognizing the public interest benefits of including insular areas in the high-cost program, has issued the declaratory rulings and waivers necessary to allow Guam <sup>13/</sup> and American Samoa <sup>14/</sup> to participate in both that program and in NECA's tariffs and pools. The Commission should reach a similar result here.

Finally, the cost of permitting PNCC to participate in the universal service program is likely to be minimal. As of June 30, 2001, PNCC served only 8,344 business and residential subscribers. <sup>15/</sup> Consulting firm GVNW Consulting, Inc. has estimated that the annual cost of including PNCC in the high-cost funds

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<sup>12/</sup> Joint Managers' Statement, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess., at 131 (1996).

<sup>13/</sup> See *Guam Telephone Authority Petition for Declaratory Ruling*, 13 FCC Rcd 13084 (1997) (establishing a study area encompassing Guam) (*Guam Study Area Order*); *Guam Telephone Authority Petition for Declaratory Ruling to Participate in the National Exchange Carrier Association, Inc.*, 13 FCC Rcd 1440 (1997) (*Guam NECA Order*) (granting Guam Telephone Authority's request to join NECA); *Treatment of the Guam Telephone Authority and Similarly Situated Carriers as Incumbent Local Exchange Carriers under Section 251(h)(2) of the Communications Act*, 13 FCC Rcd 13765 (1998) (*Guam ILEC Order*) (treating Guam Telephone Authority as an incumbent LEC within the meaning of Section 251(h)).

<sup>14/</sup> See *American Samoa Government and the American Samoa Telecommunications Authority, Petition for Waivers and Declaratory Rulings to Enable American Samoa to Participate in the Universal Service High Cost Support Program and the National Exchange Carrier Association Pools and Tariffs*, 14 FCC Rcd 9974 (Com. Car. Bur. 1999) (*American Samoa Order*).

<sup>15/</sup> With fewer than 50,000 access lines, PNCC qualifies as a "rural telephone company" under Sections 3(37) and 251(f)(1) of the Act. In addition, PNCC provides all of the services that are required in order to become an "eligible telecommunications carrier" pursuant to Sections 214 and 254 of the Communications Act. Once the rulings requested here are granted, PNCC will ask the government of Palau to designate PNCC as an eligible telecommunications carrier.

and the NECA pools is not likely to exceed \$6.5 million, approximately 2/10 of one percent of the total fund distributions. As discussed in Section III.B.2 below, Palau's circumstances are unique, and granting the relief requested here would in no way open the door to requests for similar relief by a great number of similarly situated petitioners.

To allow PNCC to participate in the federal universal service programs and the NECA tariffs and pools, the FCC should grant the declaratory rulings and waivers described in this Petition. In seeking a declaratory ruling 16/ that it may become subject to FCC jurisdiction (including eligibility for universal service funding and participation in NECA), PNCC fully understands that it will, as a result, become subject to all FCC Title II jurisdiction over its operations.

Moreover, granting waivers of certain rules, for which there are now good precedents, would advance the public interest and would satisfy the Commission's established waiver standard. 17/ Such waivers are necessary to ameliorate the unfairness of applying rules that, in effect, arbitrarily prevent support from going to carriers that have not been members of NECA and have not

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16/ The Commission may issue a declaratory ruling to "terminat[e] a controversy or remov[e] uncertainty." 47 C.F.R. § 1.2.

17/ Under Section 1.3 of the Commission's rules, the Commission may waive any provision on the basis of "good cause" where strict compliance would be inconsistent with the public interest. 47 C.F.R. § 1.3. In turn, "good cause" requires a showing of two elements: (1) that "special circumstances" warrant a deviation from the rules, and (2) that such a deviation would serve the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

received support from pre-existing universal service mechanisms. These waivers and declaratory rulings would advance the public interest because they would enable Palau to participate fully in the universal service program, consistent with the statutory objectives of the universal service program and the Commission's policies in fashioning the program 18/ and with the policies of U.S.–Palau relations as defined in the Palau Compact. They are also justified by the “special circumstance” that, unlike the vast majority of rural telephone companies, PNCC has not been a NECA member or a participant in pre-existing universal programs.

### **III. PETITION FOR DECLARATORY RULING**

PNCC requests a declaratory ruling that PNCC satisfies the criteria of Section 131 of the Palau Compact, and therefore its common carrier services are subject to the Communications Act and FCC jurisdiction. In particular, we show below that PNCC is eligible to participate in the federal universal service high-cost and low-income funding programs and in the NECA access tariffs and pools. We also show that PNCC's participation in these programs is fully consistent with Section 254 of the Communications Act of 1934, as amended, and the Palau Compact.

#### **A. PNCC Is Eligible for Universal Service Funding and for Participation in NECA**

Section 131(a) of the Palau Compact provides as follows:

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18/ See *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8947, ¶ 318 (1997) (“*Universal Service Order*”).

(a) The Government of Palau has full authority and responsibility to regulate its domestic and foreign communications, and the Government of the United States shall provide communication assistance in accordance with the terms of a related agreement which shall come into effect simultaneously with this Compact, and such agreement shall remain in effect until such time as any election is made pursuant to Section 131(b) and which shall provide for the following:

(1) \* \* \* \*

(2) the United States Federal Communications Commission has jurisdiction, pursuant to the Communications Act of 1934, 47 U.S.C. 151 et seq., and the Communications Satellite Act of 1962, 47 U.S.C. 721 et seq., over all domestic and foreign communications services furnished by means of satellite earth terminal stations where such stations are owned or operated by United States common carriers and are located in Palau. 19/

The “related agreement” mentioned in Section 131(a) is the “Agreement Regarding the Provision of Telecommunication Services by the Government of the United States to Palau Concluded Pursuant to Section 131 of the Compact of Free Association” (Section 131 Agreement). 20/ The Section 131 Agreement provides, in pertinent part, that “the Government of the United States shall act in accordance with the provisions of the laws and regulations of the United States which the Government of the United States determines are applicable to Palau at such time.” 21/ An “Agreed Minute” to the Section 131 Agreement recognizes the need

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19/ Compact of Free Association, Pub. L. No. 99-658, 100 Stat. 3678 (1986), Art. III, § 131, *codified at* 48 U.S.C. § 1931 note. The full text of Section 131 is attached as Appendix A.

20/ See Appendix B.

21/ *Id.* See Art. II ¶ 3.

for clarification of “the matter of United States Federal Communications Commission (FCC) jurisdiction in Palau.” 22/

Thus, pursuant to the Compact, once PNCC becomes a United States common carrier, the FCC must apply to PNCC Title II of the Act and the FCC’s rules thereunder, including Section 254 and the universal service rules, to PNCC’s operations in Palau. As demonstrated below, the Commission’s rules applicable to universal service funding and participation in NECA will thus be applicable in Palau.

In interpreting the Palau Compact, as in interpreting a statute, one should look first to its plain language. 23/ The plain language of Section 131(a)(2) of the Compact provides for application of the Communications Act to, and FCC jurisdiction over, common carrier services provided by —

- (1) any United States common carrier
- (2) providing domestic and international communications services in Palau
- (3) using satellite earth stations that it owns and that are located in Palau.

As demonstrated next, PNCC satisfies these three criteria.

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22/ *Id.* at A-1 (“Agreed Minute”). An Agreed Minute is a separate document associated with an international agreement that, in effect, functions like a part of the “legislative history” to which the parties to the agreement have also agreed.

23/ *United States v. Terrence*, 132 F.3d 1291, 1294 (9<sup>th</sup> Cir. 1997) (stating that, in interpreting the Palau Compact, as in interpreting a statute, a court looks first to its plain language).



**1. PNCC Will Be a United States Common Carrier Upon Grant of International Section 214 Authority as Requested in This Petition.**

In Part V of this Petition, PNCC seeks authority pursuant to Section 214 of the Act to become an authorized carrier of international telecommunications in the United States. Upon grant of that authority, PNCC will be a United States common carrier. PNCC understands that, upon grant of such authority and the other request in this Petition, it will be subject to all regulation under Title II of the Communications Act with respect to its common carrier services in Palau as well as in the United States. In particular, PNCC understands that it will be liable for contributing to the universal service support funds, for paying FCC regulatory fees, and for filing reports such as Form 499 and the annual Section 43.61 report on international traffic and revenue. Therefore, PNCC will be a “United States common carrier” within the meaning of Section 131 of the Compact.

**2. PNCC Provides Domestic and International Communications Services in Palau.**

PNCC provides domestic and international telecommunications services, including local and long-distance services, to the approximately 19,500 residents of Palau. It also provides Internet access services. As of June 30, 2001, PNCC served 8,344 business and residential subscribers.

**3. PNCC Owns a Satellite Earth Station Located in Palau and Uses It to Provide Domestic and Foreign Services.**

PNCC owns satellite transmission equipment and a satellite earth station in Palau, which it uses to provide international telecommunications services. PNCC purchased the earth station from Comsat in 1993, allowing for an

increase in PNCC's international capacity. <sup>24/</sup> There are currently no submarine cables landing in Palau, and only the one satellite earth station.

All telecommunications in Palau are interconnected with the public switched telephone network in the United States and worldwide by virtue of that one earth station. Section 131(a)(2) of the Palau Compact gives the FCC jurisdiction "over all domestic and foreign communications services furnished by means of satellite earth terminal stations . . . in Palau," which includes all of the domestic (intra-Palau), U.S.–Palau, and international telecommunications that PNCC provides in Palau. All of these communications services are provided "by means of" the earth station, which is a necessary link to enable PNCC's customers in Palau to communicate in a functioning network that is part of the worldwide public switched telephone network.

The reasonableness of this interpretation of the Palau Compact language is underscored by the use of the word "domestic" in the definition. Domestic – *i.e.*, intra-Palau – communications are not carried by means of the satellite earth station (a fact that the drafters of the Palau Compact knew). Nonetheless, "domestic" communications are included in the communications "by means of satellite earth stations" that the Palau Compact indicates are to be subject

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<sup>24/</sup> In 1994, the earth station was completely refurbished and upgraded to a digital Standard-B station. PNCC's earth station is fully owned and operated by PNCC. PNCC shares various digital satellite circuits, which accommodate the growing need for private networks, public services, and Internet access, with seven international carriers — AT&T, WorldCom, Sprint, Verizon Hawaii, Inc., IT&E

to FCC jurisdiction. Therefore, it would be unreasonable to interpret the Compact to limit the Commission's jurisdiction to the transmissions actually carried by the satellite earth station, because that would write the word "domestic" out of Section 131.

Moreover, under longstanding Communications Act precedent, the fact that telecommunications facilities or offerings are interconnected with, or may be used for, interstate and international communications is sufficient to confer FCC authority over the use of those facilities or offerings. For example, the lease of a telephone to an end-user takes place entirely within a single state and was traditionally regulated as an intrastate service by state public utility commissions. Nonetheless, the FCC concluded, and reviewing courts agreed, that because the telephones are used for interstate and international calls as well as local calls, the FCC has jurisdiction over such transactions and may preempt contrary state rules. 25/

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(Guam), KDD (Japan), and Teleglobe (Canada). See <http://www2.itu.or.th/pacific/palau/palau-telecom.htm>.

25/ See, e.g., *North Carolina Utils. Comm'n v. FCC*, 552 F.2d 1036, 1048 (4<sup>th</sup> Cir. 1977) (holding that the FCC has jurisdiction to prescribe the conditions under which terminal equipment may be interconnected with the interstate telephone line network); *AT&T-TWX*, 38 F.C.C. 1127, 1133 (1965) ("[F]or us to conclude that, because the facilities or instrumentalities are used in intrastate as well as interstate communications service, we do not have jurisdiction . . . would leave a substantial portion of the interstate communication service unregulated. We do not believe the Congress so intended."); *Public Util. Comm'n of Texas v. FCC*, 886 F.2d 1325 (D.C. Cir. 1989).

In addition, the term in the Palau Compact “communications . . . *by means of* satellite earth stations” is analogous to the term in the Communications Act “communications *by* wire.” (Emphasis added.) The Act defines the latter term as including not only “transmission . . . by aid of wire, cable, or other like connection between the points of origin and reception of such transmission,” but also “including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.” <sup>26/</sup> Applying the context of this definition to the Palau Compact’s use of the term “communications . . . by means of satellite earth stations,” the term in the Palau Compact should be understood to include not only transmissions that pass over the satellite earth stations, but also incidental communications, including other communications services that are separate from, but related to, the satellite communications.

The Commission has applied this definition on many occasions to establish its jurisdiction not only over a specific form of communications by wire, but also over closely related or interconnected communications that do not involve wires or cables. For example, the Commission held, with respect to a proposed service in which the U.S. Postal Service would receive electronically transmitted messages via Western Union’s transmission lines and then physically deliver the messages to consumers, that the physical delivery service constituted

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<sup>26/</sup> 47 U.S.C. § 153(51).

“communications by wire” as well as the electronic transmission. 27/ Similarly, the Commission has held that not only the provision of interconnecting circuits, but also the leasing of central office space in a physical collocation arrangement, constituted “communications by wire.” 28/ Similarly, in this case, the Commission should hold that it has jurisdiction not only over Palau transmissions over the satellite earth station, but also over separate, interconnected, domestic communications in Palau.

For the foregoing reasons, PNCC meets the criterion in Section 131 of the Compact that it “provides domestic and foreign communications services furnished by means of satellite earth terminal stations where such stations ... are located in Palau.”

**B. Section 254 of the Communications Act Allows the Commission to Include Palau in the High-Cost Universal Service Program**

**1. Section 254 Should Be Read Together with the Palau Compact.**

Section 254 of the Communications Act, when read together with the Compact, allow the Commission to include Palauan consumers among those eligible to receive high-cost support. PNCC requests that the Commission issue a declaratory ruling in order to remove uncertainty about this principle. 29/

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27/ *Graphnet Systems, Inc.*, 73 FCC 2d 283 (1979).

28/ *Expanded Interconnection with Local Telephone Company Facilities*, 7 FCC Rcd 7369, 7444–45, ¶ 162 (1992), *rev'd on other grounds sub nom. Bell Atlantic Tel. Cos. v. FCC*, 24 F.3d 1441 (D.C. Cir. 1994).

29/ See 47 C.F.R. § 1.2 (“The Commission may, in accordance with Section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.”).

Section 254(b)(3) provides, as a principle of the high-cost support program, that “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services ... that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”

For the legal and policy reasons discussed in this Petition, the Commission should interpret the phrase “the Nation” to include Palau. The terms of Palau’s relationship with the United States, as set out in the Palau Compact, give the FCC jurisdiction over U.S. carriers’ provision of domestic telecommunications services (provided by means of satellite earth stations) in Palau. Because “the Nation” is not specifically defined in the Communications Act, it is left to the Commission to interpret the phrase consistently with principles of statutory construction and with the policies of the Act that it administers. <sup>30/</sup> In this case, the most natural reading of “the Nation” and the one that would best serve the policies of the Communications Act is one that interprets the phrase to include all areas within the scope of FCC jurisdiction, including, as demonstrated in Part III.A, Palau. <sup>31/</sup>

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<sup>30/</sup> *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984); see, e.g., *Global Crossing Telecommunications, Inc. v. Federal Communications Commission*, 259 F.3d 740 (D.C. Cir. 2001).

<sup>31/</sup> Some might argue that the Compact only allows the FCC to operate to the extent of its existing Communications Act authority and does not expand FCC jurisdiction. But such an approach would make Section 131 a nullity. This would

In adopting the Palau Compact, Congress made clear how it interpreted the FCC's authority in Palau. The legislative history of Congress's adoption of Section 131(a)(2) of the Compact anticipates that "Palau will be included in the United States telecommunications system for rate-making and other operational aspects relating to United States common carriers." 32/ An "Agreed Minute" to the Agreement Regarding the Provision of Telecommunication Services by the Government of the United States to Palau shows that the two governments contemplated "FCC jurisdiction in Palau." 33/ The agreement that contains that understanding was concluded *pursuant to* Section 131 of the Palau Compact, which demonstrates that FCC jurisdiction in Palau is within the scope of the Palau Compact.

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violate the principle of statutory construction that no provision should be interpreted to be entirely superfluous. *See Bennett v. Spear*, 520 U.S. 154, 173 (1997) ("It is the 'cardinal principle of statutory construction'. . . [that] [i]t is our duty 'to give effect, if possible, to every clause and word of a statute' . . . rather than to emasculate an entire section.") (quoting *United States v. Menasche*, 348 U.S. 528, 538 (1955)); *United States v. Terrence*, 132 F.3d 1291, 1294 (9<sup>th</sup> Cir. 1997) (applying to the Palau Compact the same principles of construction that would be applied to a statute).

32/ Senate Rept. No. 99-403, P.L. 99-658, at 38.

33/ "The Signatory Governments agree that in order to facilitate common carrier, including satellite, telecommunications in Palau, this Agreement shall be amended as to the matter of United States Federal Communications Commission (FCC) jurisdiction in Palau." Agreement Regarding the Provision of Telecommunication Services by the Government of the United States to Palau Concluded Pursuant to Section 131 of the Compact of Free Association, p. A-1 (Agreed Minute); *see infra* Appendix B.

The Commission should not find the phrase “the Nation” in Section 254(b) of the Act to have any limiting effect on its ability to issue the requested ruling. As the Fifth Circuit has held, Section 254(b) only sets forth general principles of universal service, not specific limiting mandates. <sup>34/</sup> In Section 254, Congress delegated to the Commission the authority to make “policies” based upon those seven principles. <sup>35/</sup> Thus, a court would defer to the Commission’s reasonable explanation for why including Palau in the high-cost program was reasonably based on a balance of the seven principles, particularly given the latitude that Congress granted to specify “[s]uch other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act.” <sup>36/</sup>

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<sup>34/</sup> *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 421 (5<sup>th</sup> Cir. 1999) (Section 254(b) “identifies seven principles the FCC should consider in developing its policies; it hardly constitutes a series of specific statutory commands. Indeed, we have avoided relying on the aspirational language in § 254(b) to bind the FCC to adopt certain cost methodologies for calculating universal service support.”); *see also id.* at 411 (“Rather than setting up specific conditions or requirements, § 254(b) reflects a Congressional intent to delegate these difficult policy choices to agency discretion.”); *Qwest Corporation v. FCC*, No. 99-9546 (10<sup>th</sup> Cir. July 31, 2001) (holding that “the FCC must base its policies on the principles [of § 254(b)], but any particular principle can be trumped in the appropriate case.”).

<sup>35/</sup> 47 U.S.C. § 254(b) (“The Joint Board and the Commission *shall base policies* for the preservation and advancement of universal service on the following principles: ...”) (emphasis added); *see Texas Office of Public Utility Counsel*, 183 F.3d at 411.

<sup>36/</sup> 47 U.S.C. § 254(b)(7).



Indeed, Section 254(b)(3) explicitly provides that consumers in “insular areas” should have the benefits of universal service. 37/ In a 1999 Notice of Proposed Rulemaking, the Commission recognized the possibility that the term “insular areas” could include the Freely Associated States, such as Palau. 38/ The Commission noted one U.S. statute defining the term “insular areas” to include Palau. 39/ In fact, Palau is listed in the United States Code, Title 48, entitled “Territories and Insular Possessions.” Chapter 18, Subchapter II, within Title 48 is entitled “Palau.” The Office of Insular Affairs of the U.S. Department of Interior plays a major role in overseeing and coordinating the federal government’s relationship with Palau. 40/ Thus, it is clearly reasonable and appropriate to interpret the term “insular” in Section 254(b)(3) of the Act to include Palau.

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37/ 47 U.S.C. § 254(b)(3) (including “rural, insular, and high cost areas”).

38/ Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, *Further Notice of Proposed Rulemaking*, 14 FCC Rcd 21177, 21232–35 ¶¶ 135–140 (1999).

39/ See *id.* n.254 (citing 48 U.S.C. § 1492 (including Palau among the “Caribbean and Pacific insular areas” to which a congressional declaration of energy policy applies)).

40/ See Office of Insular Affairs, U.S. Department of the Interior, *A Report on the State of the Islands 1999* (available at <http://www.doi.gov/oia/pdf/islands.pdf>); see also Office of Insular Affairs, U.S. Department of the Interior, *Strategic Plan FY 2000–2005* <<http://www.doi.gov/oia/oiastrategicplan.pdf>>, at 9 (“The insular governments include American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, the Republic of the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia.”).

It is not dispositive that the Commission has not included Palau in its rate integration rules to date. <sup>41/</sup> The Commission issued its rate integration decision before PNCC and its services became subject to FCC jurisdiction, so there was no reason to treat Palau like a domestic jurisdiction. The operative circumstances have now changed, since PNCC has purchased the satellite earth station facilities and applied for a license as a United States carrier, thereby bringing itself within the language of Section 131(a)(2) of the Compact. These changed circumstances justify distinguishing the 1996 rate integration footnote from other incidents of FCC regulation, such as the universal service programs that are the subject of this Petition. <sup>42/</sup>

## **2. The Circumstances of Palau Are Unique.**

The language in the Palau Compact, and the factual circumstances of PNCC, are unique, and the Commission need not fear creating any unworkable precedents from granting PNCC's requests. Palau's relationship with the United States is governed by the terms of its own individual Compact of Free Association to which no other government is subject. The other Freely Associated States that were formerly part of the Trust Territory of the Pacific Islands — the Federated States of

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<sup>41/</sup> See *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 11 FCC Rcd 9564, 9590 ¶ 55 n.118 (1996) ("Thus, Palau, the Federated States of Micronesia, and the Marshall Islands are not 'states' within the meaning of that term in the Communications Act of 1934 to which carriers would be required to provide service on a rate-integrated basis.").

<sup>42/</sup> PNCC takes no position at this time on whether rate integration is, or should be, required under Section 254(g) with respect to traffic between the U.S. and Palau.

Micronesia and the Marshall Islands — are subject to a separate, if similar, Compact of Free Association. While those States' Compact includes language similar to that in the Palau Compact, to the best of our knowledge no telecommunications provider in those areas has sought to subject itself to FCC regulation in the way PNCC seeks here.

Furthermore, a grant of the requested declaratory rulings, waivers, and international Section 214 authorization would not require the FCC to regulate “intrastate” communications within Palau, except to the same extent it does in other U.S. states and territories under provisions of the 1996 Act. Under Section 254 of the Act, the FCC already provides high-cost funding to subsidize certain intrastate services. PNCC would also fall within federal interconnection rules pursuant to Sections 251 and 252, and its interstate and international services (but not intra-Palau services) would be subject to Sections 201–205. Otherwise, however, PNCC’s domestic telecommunications services would continue to be subject to regulation for most purposes by the Government of Palau.

#### **IV. APPLICATION FOR WAIVERS**

In the *American Samoa Order*, the Commission acknowledged the necessity and propriety of waiving certain rules and definitions in order to allow the sole telecommunications provider of an insular area, not previously defined as an incumbent LEC, to participate effectively in NECA and in the federal high-cost universal service support program. The Commission may waive any provision of its

rules for good cause shown. <sup>43/</sup> Here, as in the *American Samoa Order*, use of the Commission's waiver authority is appropriate. It is necessary to waive (1) the incumbent LEC requirements in Sections 36.611 and 69.2 of the Commission's rules, in order to allow PNCC to participate in NECA tariffs and pools; (2) the incumbent LEC requirements in Sections 54.301 and 54.303, in order to allow PNCC to participate in the universal service high-cost support mechanisms as an incumbent LEC; (3) the definition of "study area" in Parts 36, 54, and 69, in order to establish Palau as a new study area which will allow PNCC to calculate historical cost; and (4) rules regarding the submission of cost data for high-cost loop support.

**A. Definition of Incumbent LEC and NECA Membership**

Section 251(h)(1) of the Act defines an incumbent LEC as a LEC that (1) provided telephone exchange service in an area on February 8, 1996, and (2) was a member of NECA on February 8, 1996, or became such member's successor or assign. The Commission's rules in Parts 51 and 54 essentially adopt that definition for purposes of determining eligibility for universal service support. <sup>44/</sup> NECA calculates high-cost loop support for incumbent LECs from data submitted pursuant to Section 63.611 of the Commission's rules, which defines an incumbent LEC as a carrier that meets the definition of incumbent LEC in Part 51 of the rules. Part 69 restricts participation in NECA pools and tariffs to "telephone companies" or LECs

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<sup>43/</sup> 47 C.F.R. § 1.3; see *American Samoa Order*, 14 FCC Rcd at 9982 ¶ 15; see also *supra* note 17.

that meet the same definition of incumbent LEC. As the Accounting Policy Division found in the *American Samoa Order*, a waiver of these definitions is appropriate where, as here, a carrier is the sole provider of local exchange and exchange access service in an area and is not a competitive LEC. <sup>44/</sup> In such circumstances, the underlying purposes of the incumbent LEC requirements are not applicable. The same rationale applies to PNCC.

In *Offshore Telephone Company*, the Commission held that for a company to be eligible to become a member of NECA, it “must demonstrate that it is similar to the carriers that . . . participate in the Association. That is, [the carrier] . . . must demonstrate that it is a telephone exchange company, that it provides local exchange [service], and that it provides access services.” <sup>46/</sup> PNCC clearly meets the criteria to be considered a telephone company that provides telephone exchange service; the local telephone service it provides in Palau is

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<sup>44/</sup> See 47 C.F.R. §§ 51.5, 54.5; *American Samoa Order*, 14 FCC Rcd at 9976-77 ¶ 5.

<sup>45/</sup> See *American Samoa Order*, 14 FCC Rcd at 9983 ¶ 17; see also *Offshore Telephone Company Request to Participate in the National Exchange Carrier Association*, 3 FCC Rcd 4513, 4517 ¶ 28 (1988), *aff’d per curiam sub. nom. Offshore Telephone Company v. FCC*, 873 F.2d 408 (D.C. Cir. 1989) (“*Offshore Telephone Company*”) (holding that, for a company to be eligible to become a member of NECA, it “must demonstrate that it is a telephone exchange company, that provides local exchange [services], and that it provides access services”).

<sup>46/</sup> *The Offshore Telephone Company Request to Participate in the National Exchange Carrier Association*, 3 FCC Rcd 4513, 4517 ¶ 28 (1988), *aff’d per curiam sub. nom. Offshore Telephone Company*, 873 F.2d 408 (D.C. Cir. 1989), *quoted in Guam NECA Order*, 13 FCC Rcd at 1445 ¶ 13.

“telephone exchange service” as defined by the Act. 47/ Similarly, PNCC meets the criterion of providing exchange access service. 48/ The outbound interstate and international long-distance service provided by PNCC’s long-distance operation depends on access to PNCC’s local telephone facilities. Similarly, the inbound long-distance and international services provided by other carriers to Palau depend on the use of PNCC’s local facilities to complete calls.

It is also appropriate to waive the requirements in Sections 36.611 and 69.2 that require that telephone companies be “incumbent LECs,” as defined in Section 251(h) of the Act, in order to participate in NECA tariffs and pools and to file data pursuant to Section 36.611. 49/ As the Commission noted in *South Park Telephone Company*, “the purpose of the incumbent LEC restriction in Section 36.611 is to distinguish competitive LECs from incumbent LECs for purposes of

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47/ Section 69.2(hh) defines a “telephone company” as “a carrier that provides telephone exchange service as defined in [Section 3(47)] of the Communications Act of 1934.” 47 C.F.R. § 69.2(hh). Section 3(47) defines “telephone exchange service” as a “service within a telephone exchange or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge.” 47 U.S.C. § 153(47); see *Guam NECA Order*, 13 FCC Rcd at 1446 ¶ 14.

48/ Section 3(16) of the Communications Act defines “[t]he term ‘exchange access’ [to] mean[ ] the offering of access to telephone exchange services or facilities for the purposes of the origination or termination of telephone toll services.” 47 U.S.C. § 3(16).

49/ 47 U.S.C. § 251(h); 47 C.F.R. §§ 36.611, 69.2.

calculating universal service support . . . .” 50/ Although PNCC was not deemed to be a member of NECA in February 1996 and therefore does not meet the statutory definition of an incumbent LEC, historically and at present, PNCC is the sole provider of wireline local exchange and exchange access service in Palau and clearly is not a competitive LEC. As such, a waiver of the incumbent LEC requirements is appropriate, as the underlying purposes of the incumbent LEC requirements in Part 36 and Part 69 of Commission’s rules are not applicable to PNCC.

**B. Waiver of the “Study Area” Definition**

PNCC also requests a waiver of the “study area” definition for purposes of Parts 36, 54, and 69 of the Commission’s Rules. Part 36 Appendix-Glossary indicates that “study area boundaries shall be frozen as they are on November 15, 1984.” 51/ Palau has never been classified as a “study area” in the past. In light of the need to have a designated study area or areas in order to calculate embedded cost, a waiver of the definition is necessary to ensure that PNCC may receive universal service for high-cost loop support.

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50/ South Park Telephone Company, Petition for Waiver of Sections 36.611 and 36.612 of the Commission’s Rules, *Order*, 13 FCC Rcd 198, ¶ 12 (1997) (“*South Park Telephone*”); *see also* Sandwich Isles Communications, Inc., Petition for Waiver of Section 36.611 of the Commission’s Rules and Request for Clarification, *Order*, 13 FCC Rcd 2407, 2412, ¶ 15 (1998) (“*Sandwich Isles*”).

51/ 47 C.F.R. Part 36 Appendix-Glossary.

### **C. Waiver of Historic Cost Rules**

In addition to requiring carriers to be members of NECA in order to receive high-cost universal service disbursements, the Commission's rules require that calculations of universal service disbursement for high-cost loop support be based on certain historical cost information that has been provided to NECA. <sup>52/</sup> PNCC, of course, has not been a member of NECA in the past, and has not submitted such cost information. Because the Commission's rules require calculation of universal service disbursement for high-cost loop support to be based on the historical cost information that a carrier has submitted, application of the Commission's rules in this instance would preclude PNCC from receiving universal service support for high-cost loops until possibly as late as 2003. As the Commission acknowledged in the *Universal Service Order*:

We agree with Guam Tel. Authority that, under the principles set out in section 254(b)(3) this carrier should be eligible for universal service support and clarify the procedures to be used for any carrier, such as Guam Tel. Authority, that may not have historical costs studies on which to base the set support amounts. Guam Tel. Authority or any other carrier serving an insular area, such as CNMI, that is not currently included in the existing universal service mechanism, shall receive support based on an estimate of annual amount of their embedded costs. <sup>53/</sup>

In the *American Samoa Order*, the Accounting Policy Division found that this language in the *Universal Service Order* supported allowing American Samoa Tel. to begin receiving high-cost loop support based on average schedule

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<sup>52/</sup> See 47 C.F.R. §§ 36.611 and 36.612.

<sup>53/</sup> *Universal Service Order*, 12 FCC Rcd at 8947, ¶ 318 (footnotes omitted).



settlements until verifiable embedded cost data was to be filed. 54/ Similarly, PNCC hereby requests any waiver of the Commission's historic cost rules that may be necessary in order to enable PNCC to receive universal service support effective from January 1, 2002. 55/ PNCC proposes to submit to NECA data on actual historical costs, an estimate of historical costs, and/or rolling annualized average of current costs, which would be subject to quarterly true-up adjustment based on actual costs. The latter methodology has previously met with Commission approval. 56/ Although initial support to PNCC would be based on estimates and/or projections, the projections would be updated quarterly, thus diminishing reliance on the projected costs, and ultimately resulting in universal service payments based solely on experience.

## **V. APPLICATION FOR INTERNATIONAL SECTION 214 AUTHORITY**

In the event that the Commission grants the other relief requested in this Petition, PNCC also seeks authority pursuant to Section 214 of the Communications Act of 1934, as amended, to provide resold international switched telecommunications services on all international routes. PNCC seeks this authority in order to establish that it is a "United States common carrier" within the meaning

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54/ *American Samoa Order*, 14 FCC Rcd at 9990, ¶ 26.

55/ *See Sandwich Isles*, 13 FCC Rcd at 2411, ¶¶ 11–12 (authorizing universal service support retroactively to Jan. 1, 1998).

56/ *See South Park Telephone; Border to Border Communications, Petition for Waiver of Sections 36.611 and 36.612 of the Commission's Rules*, Memorandum Opinion and Order, 10 FCC Rcd 5055 (1995) ("*Border to Border*"); *Sandwich Isles*.

of Section 131 of the Palau Compact and also in order to provide competitive international telecommunications services to customers in the United States. Pursuant to Section 63.18 of the Commission's rules, PNCC provides the following information:

(a) The name, address, and telephone number of the applicant is as follows:

Palau National Communications Corporation  
Post Office Box 99  
Koror, PW 96940  
Phone: 011-680-587-9000  
FAX: 011-680-587-1888

(b) PNCC is a corporation organized under the laws of Palau.

(c) Please address correspondence concerning this application to the following:

Ed Carter, General Manager  
Palau National Communications Corporation  
Post Office Box 99  
Koror, PW 96940  
Phone: 011-680-587-9000

With a copy to:

David L. Sieradzki, Esq.  
Hogan & Hartson L.L.P.  
555 13<sup>th</sup> Street N.W.  
Washington, D.C. 20004  
Phone: (202) 637-5600

(d) PNCC has not previously received authority under Section 214 of the Act.

(e) PNCC is requesting Section 214 authority to provide international switched services solely by reselling the international switched services of unaffiliated U.S. carriers, pursuant to Section 63.18(e)(2) of the Commission's rules. PNCC certifies that it will comply with the terms and conditions contained in Section 63.23 of the Commission's rules.

(h) Applicant is directly and wholly owned by the Government of the Republic of Palau. There are no interlocking directorates with a foreign carrier.

(i) Applicant certifies that it is a carrier in Palau and is not otherwise affiliated with any foreign carrier.

(j) Applicant certifies that it seeks authority to provide resold international telecommunications service to Palau.

(k) The following information shows that Palau satisfies the effective competitive opportunities test of Section 63.18(k)(3) and that U.S. carriers are legally and practically able to provide resold international switched services in Palau and to interconnect with PNCC's facilities for the provision of resold switched services. First, there is no legal impediment to entry into the Palau marketplace by U.S. carriers in addition to PNCC. Moreover, the other elements of the effective competitive opportunities test will be satisfied if the declaratory rulings sought in the Petition of which this Application is a part are granted, because PNCC will be subject to the pro-competitive requirements of the Act and the FCC's rules. Upon bona fide request, PNCC will establish reasonable and nondiscriminatory charges, terms, and conditions for interconnection to its facilities pursuant to the

requirements of Sections 201–205 and 251–252 of the Act. Moreover, provisions of Title II of the Act and the FCC’s rules, which will apply to PNCC, establish competitive safeguards against anticompetitive practices, including rules regarding cost allocation, network disclosure, and customer proprietary network information. Finally, there will be an effective regulatory framework and an independent regulator, in that the FCC itself will be the regulator of international communications originating over PNCC’s facilities in Palau and between Palau and the United States.

(l) PNCC will file quarterly reports of U.S.-Palau resale traffic pursuant to Section 43.61(c) of the Commission’s rules.

(m) PNCC qualifies for non-dominant classification pursuant to Section 63.10(a)(4) because it seeks only to provide international switched services through the resale of unaffiliated U.S. carriers’ international switched services.

(n) Applicant certifies that it has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route, and that it will not enter into such agreements in the future.

(o) Applicant certifies pursuant to 47 C.F.R. §§ 1.2001–.2003 that no party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

(p) Applicant does not seek streamlined processing of this international Section 214 application pursuant to Section 63.12 of the Commission’s rules.

Applicant seeks a grant of this application only if the other relief sought in this Petition is granted.

## VI. CONCLUSION

For the foregoing reasons, PNCC respectfully requests that the Commission grant all waivers, declaratory rulings, and applications necessary, including any waiver or declaratory ruling necessary but not specifically requested herein, in order to allow PNCC to participate in all of the universal service high-cost support mechanisms as of January 1, 2002. Grant of these declaratory rulings and waivers is well within the Commission's authority and will advance the public interest by allowing PNCC to receive universal service high-cost support and by ensuring that the people of Palau have access to low-cost telecommunications services, as envisioned by Congress in adopting the Palau Compact and the Telecommunications Act of 1996.

Respectfully submitted,

PALAU NATIONAL COMMUNICATIONS  
CORPORATION

By: David L. Sieradzki  
David L. Sieradzki  
Douglas A. Klein  
HOGAN & HARTSON, L.L.P.  
555 Thirteenth St., N.W.  
Washington, D.C. 20004

Counsel for the Palau National  
Communications Corporation

November 15, 2001

**CERTIFICATION**

I, Ed Carter, General Manager of Palau National Communications Corporation (PNCC), hereby certify on behalf of PNCC as follows:

1. I have read the foregoing Petition of the Palau National Communications Corporation, and all factual statements and certifications in the Petition are true.
2. No party to this application, nor any member of PNCC's governing board, is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.



Ed Carter  
General Manager  
Palau National Communications  
Corporation  
Post Office Box 99  
Koror, Palau 96940

## APPENDIX A

### Section 131 of the Compact of Free Association Between the United States and Palau

the United States to citizens of Palau for travel outside of Palau, the Marshall Islands, the Federated States of Micronesia, the United States and its territories and possessions.

### Article III

#### Communications

##### Section 131

(a) The Government of Palau has full authority and responsibility to regulate its domestic and foreign communications, and the Government of the United States shall provide communication assistance in accordance with the terms of a related agreement which shall come into effect simultaneously with this Compact, and such agreement shall remain in effect until such time as any election is made pursuant to Section 131(b) and which shall provide for the following:

(1) the Government of the United States remains the sole administration entitled to make notification to the International Frequency Registration Board of the International Telecommunications Union of frequency assignments to radio communications stations in Palau; and to submit to the International Frequency Registration Board seasonal schedules for the broadcasting stations in Palau in the bands allocated exclusively to the broadcasting service between 5,950 and 26,100 kHz and in any other additional frequency bands that may be allocated to use by high frequency broadcasting stations; and

(2) the United States Federal Communications Commission has jurisdiction, pursuant to the Communications Act of 1934, 47 U.S.C. 151 et seq., and the Communications Satellite Act of 1962, 47 U.S.C. 721 et seq., over all domestic and foreign communications services furnished by means of satellite earth terminal stations where such stations are owned or operated by United States common carriers and are located in Palau.

(b) The Government of Palau may elect at any time to undertake the functions enumerated in Section 131(a) and previously performed by the Government of the United States. Upon such election, the Government of the United States shall so notify the International Frequency Registration Board and shall take such other actions as may be necessary to transfer to the Government of Palau the notification authority referred to in Section 131(a) and all rights deriving from the previous exercise of any such notification authority by the Government of the United States.

##### Section 132

The Government of Palau shall permit the Government of the United States to operate telecommunications services in Palau to the extent necessary to fulfill the obligations of the Government of the United States under this Compact in accordance with the terms of related agreements which shall come into effect simultaneously with this Compact.



## APPENDIX B

Agreement Regarding the Provision of Telecommunication Services by the  
Government of the United States to Palau Concluded Pursuant to Section 131 of the  
Compact of Free Association

**Agreement Regarding the Provision  
of Telecommunication Services by the  
Government of the United States  
to**

**Palau**

**Concluded Pursuant to Section 131 of  
the Compact of Free Association**

Agreement Regarding the Provision  
of Telecommunication Services by the  
Government of the United States  
to  
Palau  
Concluded Pursuant to Section 131 of  
the Compact of Free Association

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Agreement Regarding the Provision  
of Telecommunication Services by the  
Government of the United States  
to .

Palau

Concluded Pursuant to Section 131 of  
the Compact of Free Association

This Agreement is concluded by the Signatory Governments and sets forth their respective authority and responsibility with regard to the provision of telecommunication services by the Government of the United States to the Government of Palau as authorized by Section 131 of the Compact of Free Association (the Compact).

Article I

Definitions

Article I

Definitions

1. The definition of terms set forth in Article VI of Title Four of the Compact are incorporated in this Agreement.

2. For the purposes of this Agreement only, the following term shall have the following meaning:

"International Telecommunication Union (ITU) Administration":  
is for the purposes of this Agreement the Government of the United States.

Article.II

Authority and Responsibility

Article II

Authority and Responsibility

1. The Governments of Palau, which is competent and capable under Section 121 of the Compact to conduct foreign affairs in their own name and right with respect to, among other things, communications, has requested that the Government of the United States act as its agent with regard to the provision of certain communications services set forth in Section 131 of the Compact.

2. The Government of the United States shall provide telecommunication services to the Government of Palau as authorized by Section 131 of the Compact. Pursuant to Section 131, the Government of the United States shall represent the interests of the Governments of Palau before the International Telecommunication Union (ITU) and other administrations concerned with international telecommunication in matters pertaining to the International Telecommunication Convention.

3. When the Government of the United States acts on behalf of the Government of Palau pursuant to paragraph 2 of this Article, the Government of the United States shall act in accordance with the provisions of the laws and regulations of the United States which the Government of the United States determines are applicable to Palau at such time. The actions of the Government of the United States shall be consistent with the following:

(a) Prior to the Government of the United States acting on behalf of the Government of Palau in its capacity as ITU Administration, wherever preparation for, or representation at plenipotentiary or administrative conferences of the Union is concerned, the Government of the United States shall consult with the Government of Palau on matters which in the opinion of the Government of the United States relate to or affect any such Government. These consultations shall occur in order for the Government of Palau to present its views to the Government of the United States which shall consider these views when developing United States proposals and positions in connection with the conference preparatory efforts cited hereinbefore. No consultations need be undertaken in respect to matters which, in the opinion of the ITU Administration arise by virtue of due application of the regulatory provisions of the international Radio Regulations then in force.

(b) The Government of the United States shall notify the Government of Palau of significant actions of the ITU and other administrations which the Government of the United States regards as relating to or affecting such governments.



(c) When developing those rules and regulations of the United States which may be applicable to the Government of Palau pursuant to paragraph 2 of this Article, the Government of the United States shall give prior notice of its intentions to the Government of Palau and shall take into account all views expressed by or on behalf of the Government of Palau in connection with the relevant rule-making proceedings.

(d) The provisions of Section 421 of the Compact shall apply, and the Government of the United States shall confer promptly at the request of the Government of Palau and that government shall confer promptly with the Government of the United States on matters relating to this Agreement except in respect to matters which, in the opinion of the ITU Administration, arise by virtue of due application of the regulatory provisions of the International Radio Regulations then in force.

(e) For the purpose of carrying out the provisions of this Agreement, Competent Authorities shall be designated by each of the Signatory Governments. The Competent Authority of the Government of the United States and the Competent Authority of the Government of Palau may communicate directly with each other. The designation by a government of its Competent Authority will be communicated in writing to the other signatory governments, and such designation may, from time to time, be amended.

4. (a) The authority and responsibility of the Government of the United States pursuant to paragraph 1 of this Article is without prejudice to the authority and responsibility of the Government of Palau with regard to telecommunication in Palau, except as may otherwise be required by the International Telecommunication Convention as completed by the Administrative Regulations.

(b) The Governments of Palau shall develop, prior to conducting any telecommunication activity in Palau, standards and procedures, as recommended by the Government of the United States, which shall be consistent with the ITU Convention inasmuch as this Convention is a treaty obligation of the ITU Administration for the Government of Palau. In developing, implementing and maintaining these standards and procedures, the Government of Palau shall take whatever steps may be required by the ITU Convention, as completed by the Administrative Regulations, such that the ITU Administration for the Government of Palau may fully meet its obligations under that Convention.

Article III

Transition

Article III

Transition

1. Upon receipt of notice pursuant to Article IV of this Agreement from the Government of Palau, the Government of the United States shall assist the requesting government in obtaining membership in the ITU. After receipt of notice from the ITU of the requesting government's qualification to act, the Government of the United States shall take such actions as may be necessary to transfer to Palau all relevant obligations and rights.

2. Upon termination of the functions enumerated in Section 131 of the Compact by the Government of the United States, the applicability of all laws of the United States, and of its regulations, practices, policies, treaties, conventions, and arrangements which are applicable to this Agreement shall cease to be applicable in the territory of Palau, and any authority and responsibility of the Government of the United States in respect to such services shall also cease.

Article IV

Effective Date, Amendment and Duration

Article IV

Effective Date, Amendment and Duration

1. This Agreement shall come into effect simultaneously with the Compact.

2. The provisions of this Agreement may be amended as to the Government of Palau and as to the Government of the United States at any time by mutual agreement.

3. This Agreement shall remain in force for a period of fifteen years, subject to Section 231 and Article IV of Title Four of the Compact and in the absence of action to the contrary by a Plenipotentiary Conference of the ITU, unless terminated by a signatory Government in the following manner:

(a) Termination of this Agreement by any signatory Government shall be effected by a written notification to either the Government of the United States or to the Government of Palau, as appropriate, and

(b) Termination shall take effect as mutually agreed or one year after the recipient Government has been notified, but not before receipt of notice from the ITU of the qualification to act.

4. This Agreement may be accepted, by signature or otherwise, by the Government of the United States, and the Government of Palau. Each such Government shall possess an original English language version.

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this Agreement Regarding the Provision of Telecommunication Services which shall come into effect in accordance with its terms between the Government of the United States and the other Government signatory to this Agreement.

Agreement Regarding the Provision  
of Telecommunication Services by the  
Government of the United States  
to  
Palau  
Concluded Pursuant to Section 131 of  
the Compact of Free Association

DONE AT Koror, Republic of Palau, this 10th day of  
January, one thousand, nine hundred eighty-five

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FOR THE GOVERNMENT

OF

THE UNITED STATES OF AMERICA



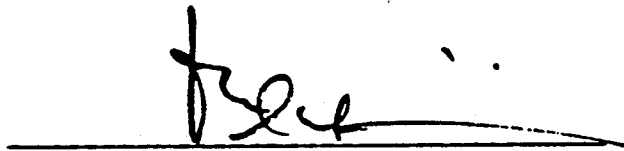
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FOR THE GOVERNMENT

OF

THE REPUBLIC OF PALAU



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A-1

Agreement Regarding the Provision  
of Telecommunication Services by the  
Government of the United States  
to  
Palau  
Concluded Pursuant to Section 131 of  
the Compact of Free Association

AGREED MINUTE

The Signatory Governments agree that in order to facilitate common carrier, including satellite, telecommunications in Palau, this Agreement shall be amended as to the matter of United States Federal Communications Commission (FCC) jurisdiction in Palau.

## APPENDIX C

### Selected Correspondence Between the Governments of Palau and the United States



September 12, 2001  
Serial No. 01-440

The Honorable George W. Bush  
President of the United States of America  
C/O The Embassy of the United States of America to the Republic of Palau  
Koror, Republic of Palau

Re: The Heart Felt Condolences and Support of the People of Palau

Dear President Bush:

The People of the Republic of Palau, like the rest of the world, are reacting with shock, horror and grief at the heinous and cowardly acts which have been committed against the private citizens and the government of the United States of America. On behalf of all Palauans, please allow me to express our most heartfelt condolences to both your government and your people, especially to the families, relatives and loved ones directly impacted by this terrible occurrence.

While we are certain that your great nation will pull together as only America can and will overcome the incredible physical, spiritual, and political challenges which now face the United States, we nonetheless want to assure you that the people and government of the Republic of Palau stand committed to providing, at your request, whatever support and assistance we are able to give to your recovery efforts.

This offer of support includes our unbending resolve, as a long term friend and ally of the United States, to fully cooperate with, and lend our support to, with all means at our disposal, the identification, location, and punishment, in the strongest form, of those elements ultimately responsible for the despicable terrorist acts of the last 24 hours.

Until that justice is served, however, please be assured that the prayers and best wishes of all Palauans are with the people and government of the United States of America.

Sincerely,

Tommy E. Remengesau, Jr.  
President of the Republic of Palau

October 9, 2001  
Serial No. 01-493

The Honorable George W. Bush  
President of the United States of America  
C/O The Embassy of the United States of America to the Republic of Palau  
Koror, Republic of Palau

Re: Strategic Assistance in Combating Terrorism

Dear President Bush:

I would first like to indicate my support for the military actions taken by the United States and its allies in Afghanistan on Monday, October 8<sup>th</sup>. The Republic of Palau is fully supportive not only of this action, but all subsequent military actions that are deemed necessary to successfully initiate, the process of the global battle against terrorism. The Republic is united in the noble objective of the United States to secure the freedom of the entire world from the fear that results from periodic terrorism attacks. There can be no compromise where the lives of our citizens are at stake.

In my prior communication to you dated September 12, 2001, I indicated that the Republic of Palau would provide the United States with whatever support and assistance we are able to provide in your efforts to respond to these heinous terrorist acts of September 11, 2001.

Now that you and your advisors have had time to reflect on the strategic military needs of the United States in mobilizing for the coming war against terrorism, I would like to expand this earlier commitment of assistance to the United States to include the use of Palau's sea ports and airports, and associated land and facilities in the Republic for strategic mobilization.

The Republic cannot offer you large commitments of money or troops, although we are very proud of the fact that some of our sons and daughters are serving in the U.S. armed forces and are contributing to your efforts to combat terrorism. We therefore offer you what we have to demonstrate that Palau is truly a long-standing friend of the Government and the People of the United States. My Office and the Ministry of State stand ready to confer with your representatives regarding your needs.

The Honorable George W. Bush  
President of the United States of America  
Re: Strategic Assistance in Combating Terrorism  
10/18/01

May your continuing efforts at recovery meet great success.

Sincerely,

Tommy E. Remengesau, Jr.  
President of the Republic of Palau

## **Press Release**

October 11, 2001

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### **PRESIDENT REMENGESAU SUPPORTS THE UNITED STATES**

Tommy E. Remengesau, Jr., the President of the Republic of Palau, has given his complete support to the recent bombings of Afghanistan by the United States military. In a letter to President Bush, dated October 9<sup>th</sup>, President Remengesau stated that, "The Republic of Palau is fully supportive, not only of this action, but all subsequent military actions that are deemed necessary to successfully initiate the process of the global battle against terrorism."

The President wrote President Bush to assure the United States of Palau's continuing support and to demonstrate that all of the nations of the world are united in fighting terrorism, whenever, and wherever it is found. "The terrorist attacks of September 11, 2001 did not just impact the United States – they directly affected every nation in the world." However, the President further indicates that he is strongly opposed to any inference that Islam is the world's enemy. "This was not the act of all Islamic people in the world. Rather, it was the act of a minority of extremists." Military actions must therefore be directed at such extremists, which current reports indicate is masterminded by the Al-Qaida."

The President, in recognizing the innocence of the Afghan people at large, is donating \$3,000 from his own budget to International Humanitarian Assistance, in line with U.S. humanitarian initiatives. This donation will be delivered to the Palau Ambassador to the United States Hersey Kyota in Washington D.C., along with the \$10,000 appropriated in RPPL 6-12 and the \$4,000 collected by the Red Cross. The \$10,000 will also be sent to the Ambassador with directions to deliver the same to the Red Cross to be used for the "Disaster Relief Fund", which goes to individuals directly impacted by the terrorist attack. The \$4,000 will go to the appropriate Collection Relief Agency in the United States, as determined by the Ambassador.

In his letter to President Bush, President Remengesau also offered the use of Palau's sea ports and airports, and associated land and facilities in the Republic for strategic mobilization. "Palau must not only give its verbal support to the United States and the world, it must offer itself in partnership in the actual efforts to unseat terrorism." The President expressed to President Bush his pride, and the pride of all of the People of Palau, that our "own sons and daughters are serving in the U.S. armed forces and are contributing to your efforts to combat terrorism."

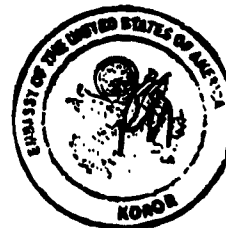
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Note No. 75/2001

The Embassy of the United States of America in Koror presents its compliments to the Ministry of State of the Republic of Palau and has the honor to request the Ministry's assistance in transmitting Charge d' Affaires Ronald A. Harms' letter to His Excellency Tommy Remengesau Jr., President of the Republic of Palau.

The Embassy of the United States of America in Koror avails itself of this opportunity to renew to the Ministry of State the assurance of its highest consideration.

Embassy of the United States of America  
Koror, 19 October 2001



encl

DIPLOMATIC NOTE

*Embassy of the United States of America*



Koror, 19 October 2001

His Excellency Tommy E. Remengesau, Jr.  
President  
Republic of Palau

Dear President Remengesau:

I am responding to your inquiry regarding any plans the United States may have to establish a military base in Palau. The United States appreciates your continuing support and recognizes the strategic importance of Palau. However, at this time, the United States has no plans to establish a military base in Palau.

Sincerely,

A handwritten signature in cursive script that reads "Ronald A. Harms".

Ronald A. Harms  
Charge d' Affaires